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IN THE MATTER OF THE CLAIM OF

BRIAN T. BURKE

against

SOLOMON ACOSTA & FASCORP/GREAT WEST &

MTA NYC TRANSIT AUTHORITY, ETC.,

- - - - - X

347 Madison Avenue

New York, New York

December 20, 2006

10:10 o'clock A.M.

EXAMINATION UNDER OATH OF BRIAN T. BURKE,  
taken by the Attorneys for MTA, held at 347 Madison  
Avenue, New York, New York, on Wednesday, December  
20, 2006 at 10:10 o'clock A.M.

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A P P E A R A N C E S:

MTA

347 Madison Avenue, 9th Floor

New York, New York 10017

BY: CHIN WAH CHIN, ESQ.

Brian T. Burke, Pro Se

145 East 23rd Street, 4R

New York, New York 10010

- Burke -

BRIAN T. BURKE, after having first been duly sworn by Bruce Rothman, a Notary Public in and for the State of New York, was examined and testified as follows:

EXAMINATION

BY MR. CHIN:

A I am Brian T. Burke, and I will be telling the truth, yes, in the affirmative.

Q Mr. Burke, my name is Ching Wah Chin, I represent the MTA at this hearing. I understand you sent a notice of claim to us concerning some matters. We'll be asking questions today concerning that claim of yours. Since I notice that you're videotaping yourself could you just take off your glasses for a moment so that it would have a full view of your face?

A Why would I have to do that, I notice you're wearing glasses and so are you.

Q You're wearing dark classes which means it's covering up your face?

A I also have a beard it's also covering up my face, I'm not going to be removing either one.

Q Okay, but you are Brian T. Burke?

A Yes.

- Burke -

Q You live at 145 East 23rd Street?

A Apartment 4R, yes, New York, New York  
10010.

Q Mr. Burke, I'll be asking you a series  
of questions today regarding your claims, and if you  
at any time you do not understand a question I would  
ask that you tell me that so I could rephrase the  
question, is that all right?

A Yes.

Q If at any time you don't understand a  
question please tell me and I will repeat the  
question. It's important that you understand my  
questions, that you answer them as best as you can.  
If there is any part of a question that you don't  
understand you please will tell me that, is that  
okay?

A Yes.

Q Please state your name and address for  
the record?

A My name is Brian Thomas Burke, I live  
at 145 East 23rd Street, apartment 4R, New York, New  
York 10010.

Q Mr. Burke, do you have an attorney  
representing you on this matter?

- Burke -

A At this time I do not.

Q Have you been known by any other names than what you've just given me today?

A No.

Q Do you have any nicknames or aliases?

A No.

Q Before coming here for this hearing did you review any records, notes or anything else to prepare you for your testimony?

A I did review some data.

Q Such as?

A Well, I reviewed this, for instance this Law 1276 where it doesn't have any request for documentation it's just for oral examination.

Q Anything else that you examined?

A General research on the RICO Acts and past wrongs done by the MTA and ongoing criminal acts done by the MTA management.

Q Such as?

A Such as violating the education law, practicing a profession without a license the profession being medicine by a sick desk, the crew office which I brought to the inspector general's office as well as other torts including criminal

- Burke -

acts including the instant case here.

Q Putting aside the criminal acts related to the instant case have you brought a claim, have you filed an official formal claim on any of these other matters you discussed?

A I did grievances on one of them.

Q Which one?

A The, about the sick desk and the Class E felonies, ongoing felonies being performed at management's instructions.

Q When do you claim these incidents occurred?

A Ongoing, I don't know whether, the start date, certainly since I've been working at the MTA.

Q Do you have, when was the grievance brought, when did you bring your grievance?

A 2005.

Q Who did you submit that grievance to?

A I did a proper grievance through the union and labor relations and management.

Q Do you know the resolution of that grievance?

A No, they refused to answer it even

- Burke -

though they've gone way over time and it's supposed to go to an arbitrator if they do answer, they seem to figure that not answering it is the same as winning a case.

Q Any other filings or formal complaints or written complaints that you have submitted on any of these issues?

A No, just discussions with union members and others about corruption and other criminal acts by MTA management.

Q What is your date of birth?

A 9/13/61.

Q Where were you born?

A Chicago, Illinois.

Q Have you ever used or listed another birthday?

A No.

Q Do you have a Social Security number?

A Yes.

Q What is your Social Security number?

A Is this going to be a public record, I just want, I have a problem with possible identity theft putting my Social Security number on public records.

- Burke -

Q If you prefer you could write it down on a sheet of paper and pass it over to me so it's not on the transcript, it's just to confirm that we're looking at the right --

A That's an excellent idea, thank you.

Q Thank you. Where are you working now?

A I work for MTA New York City Transit Department of Subways Rapid Transit Operations B Division --

Q What do you do there?

A District 4. I'm a train operator.

Q How long have you been working there?

A Just under six years.

Q In that specific position or with the Transit Authority?

A Always in that position as a train operator.

Q And you've been working as a train operator for six years with the TA?

A Just under six years, yes.

Q Where were you working before then?

A I was working for the Department of Census, I mean, excuse me, Department of Commerce Bureau of Census.



- Burke -

Q How long were you working with them?

A Well, I was working there in various episodes as it were, the first time it was in 1993, I worked with them for during the year 2000 and during the year 1999.

Q Was this a permanent position or was it part-time?

A No, it was part-time more or less, it was a temporary positions.

Q Did you have any full-time positions before the Census in 2000 or 1999?

A I was working in a management consulting firm Peter Vanilla & Associates I believe in both those years but I don't know, I don't know what time period you're talking about.

Q I just wanted to know the last full-time job you had before the Transit Authority, that was it?

A Yes, those would be the last two.

Q Where was that located?

A Which one?

Q The management consulting?

A That was in SOHO, I don't recall the address, on Broadway was the last address.

- Burke -

Q How do you spell that name?

A Actually I think they might have changed their name is PVA now, PVA International, PVA International I believe.

Q What did you do there?

A Administrative assistant.

Q How long were you there?

A Off and on, what is it, two years, I don't have the information on me.

Q About two years?

A Yes.

Q Is there a specific train line that you're operating trains on?

A Yes, my pick job is 307 Extra North, I work on the A and C lines primarily, I'm also available for L lines and occasionally J and M.

Q Roughly when is your shift?

A P.M.'s, always P.M.'s is my pick shift starting work from noon to 10 P.M.

Q Is there any claim for lost earnings in that matter?

A I do not think so, no, not at this time unless I was to be terminated for bringing suit then it would be lost earnings which has been

- Burke -

alleged.

Q Who alleged that?

A By Mr. Kapoor of the inspector general's office, I wasn't allowed to tape my conversations with him on this matter but it was brought up, he brought that up in fact.

Q When you say tape your conversations on the matter, what conversations?

A I asked to tape it, as obviously you did generously allow me to tape this I asked to tape my discussions with the inspector general's office regarding criminal activity in this matter and they declined that offer and so the discussion was somewhat off the record, discussions plural.

Q Now, you brought a claim that states unlawful conversion of plaintiff's 457 account?

A That's correct.

Q What did you mean by that?

A I have a 457 account I've had for, since 2001 and as well as a 401-K, and my best understanding is that this Mr. Solomon Acosta who claims, who may in fact be what's called a plan administrator, I can't say exactly what that title means or what he's empowered to do, but he

- Burke -

apparently has frozen or converted or blocked my account from taking lawful disbursement or loan for the purchase, to complete the purchase of my primary residence that I believe that he's attempted to cause a default on my residence, the residence is valued I put in the records there approximately a million dollars, with the equity and the deposit as approximately half a million dollars, and I did put a claim in for duress and mental stress for another half million dollars to round it out to one million.

Q Before your interaction with Mr. Solomon Acosta concerning this matter did you know him beforehand?

A Absolutely not and I still don't know him, I've never met him.

Q The address that you, the home address you gave how long have you been living at that address?

A Since 1989, 17 years.

Q This is an owned residence?

A It's a, no, rent-stabilized studio apartment.

Q So you have no equity in this particular apartment that you live in?

- Burke -

A Absolutely none.

Q This is your residence?

A Yes, at this time.

Q Do you have any other residences?

A I have a residence that's being built  
in Las Vegas.

Q The apartment that you're living in  
presently do you know whether it's on the market, if  
you know?

A What do you mean?

Q Is it being sold, is the building  
being sold?

A The building, no, not to my  
understanding, no.

Q Do you have a driver's license?

A Yes.

Q Is the same address you've provided me  
on your driver's license?

A Yes.

Q How long have you had your driver's  
license?

A This driver's license I had awhile,  
you know, you know, I don't know what year, '91,  
something around that, 1990. I also had a license

- Burke -

when I lived in California.

Q When was that?

A In the 1980's, 1970's, 1980's to '85.

Q What was your name on the California

license?

A It would have been the same, I don't

have, it would have been either Brian Burke, Brian Thomas Burke, Brian T. Burke.

Q That is the name on your present

driver's license?

A Burke, Brian T.

Q Mr. Burke, do you vote?

A Yes.

Q Do you vote -- where do you vote?

A I vote in fact in my residence, they

actually have the voting machines in the residence in the lobby of my building.

Q Do you know who is your state

representative?

A The assemblyman just elected his name

is Brian, what's his last, Cavanaugh, and the state senate you have me on that one.

Q It's okay. How long have you been

registered to vote in that location?

- Burke -

A Approximately around 1990.

Q Since 1990?

A Approximately, I think, I can't tell you the exact date.

Q Now, this in Las Vegas is this built?

A No, it is not it, it shouldn't be built as I understand to actually the beginning of 2008.

Q I understand from what you said before that you wanted to take out a loan from your 457 account, is that correct?

A I did and I do.

Q What were you going to do with the loan?

A I was going to pay the second part of my deposit, the second 10 percent of the deposit and I was counting on the money to complete the purchase as far as the deposit requirement.

Q This is the deposit requirement for which building?

A The Trump Las Vegas condominium project.

Q Do you have an address for that location at this point in Las Vegas?

- Burke -

A I didn't bring it with me, I gave, I don't know if it was Mr. Acosta, it was actually a Ms. Margarita Hahn I sent a 50 page contract plus one page showing the date, the exact date the money was due and where if it wasn't paid I would go into default and lose the property which was I believe September 7th. They had the 50 page contract which was all of my information and I obviously I believe way way way more than they were entitled to for me to have access to my own money.

Q Could you repeat that last sentence?

A I said way way way, I don't know how many ways.

Q I meant what was it referring to?

A Access to my own money, this is my own money, the 457 is money I already earned and I contended and do contend it's been illegally seized by Solomon Acosta in conjunction with Fascorp/Great West and MTA New York City Transit to my detriment.

Q I'm sorry, could you finish that?

A To my detriment.

Q Have you received any notices of default on that Las Vegas property?

A No, I did not default on it as of yet,



- Burke -

obviously I still have to obtain a mortgage which I suspect I will also be interfered with. I did not default certainly to no help of MTA and Mr. Acosta, my understanding is my 457 is still blocked, I had to get a general disbursement loan from my 401-K which Fascorp did for me. I did threaten them with an injunction and an order to show cause in federal court so they did release some moneys from my 401-K but not my 457. It was a general disbursement loan, and it's a great difference because it's a five-year loan and such a large amount of my check is being taken from this that I won't be able to obtain a mortgage which I believe is the whole plan here.

Q The plan, which plan?

A The plan to cause me to default on this property and have it go back to Trump and what's possibly some considerations to Mr. Acosta and company.

Q So no part of the loans that you were interested in have anything to do with your East 23rd Street address?

A Absolutely not, no, though of course I do owe rents ongoing so I have an obligation there so, you know, money being fungible obviously I had

- Burke -

to take some of the moneys that I would need for my ongoing rents to squeeze my money supply greatly.

Q Are you behind in your rent at this moment?

A Well, I'm in court with my landlord at this moment so I guess you could say yes.

Q When was the last time you paid your landlord for rent?

A Well, let's see, I lost a case to him beginning of the year, I paid him in February I paid him 15,000.

Q That had some component of back rent in it?

A Yes.

Q What is your, is it a monthly rent that you pay him?

A Yes.

Q What is the monthly rent you pay him?

A \$704.

Q Are most of your belongings at that location at 23rd Street?

A Yes.

Q Do you have any belongings, personal belongings or other assets that are located out in

- Burke -

Las Vegas?

A No, I haven't moved to Las Vegas yet because it hasn't been built so the condominium is somewhere in space right now and I would be unable to store my property there.

Q What do mean in space?

A Well, I don't believe they're at that floor yet even, it's on the 48th floor, and they're about the 20th floor.

Q Were you planning to move to Las Vegas at one point?

A I'm still planning to move to Las Vegas obviously this is being interfered with.

Q When are you planning to move to Las Vegas?

A Obviously it would be sometime after certificate of occupancy is granted on my residence. I also hope to obtain employment out in Las Vegas.

Q So you envision leaving New York City?

A Absolutely.

Q But this is at some point in the future that you're leaving New York City?

A Well, obviously if I was to go in default on this property, etc., due to the actions

- Burke -

of Mr. Acosta and company I wouldn't be able to do so.

Q What is the monthly maintenance on the location that's being built in Las Vegas, if you know?

A I don't, it's in the contract certainly, I don't know, they wouldn't give you a copy of this, you know, there's a great deal of material being held by Fascorp and Margarita Hahn and Mr. Acosta regarding this issue.

Q Do you have a general idea of what the monthly maintenance would be?

A I do not recall, no.

Q Do you have an idea whether it would be more or less than what you're paying for rent right now in New York City?

A I would just, well, there's two different, there's two components, are you talking about the mortgage or are you talking about just the condominium common fees, there's two?

Q The common fees?

A I wouldn't even guess, I don't know, I have it written down, but.

Q What was the overall mortgage that you

- Burke -

need to get for the Las Vegas property?

A It would be for, let's see, the property was 710,000 minus the 20 percent I already paid so, you know, we're talking what, approximately 500,000 I believe, a little bit less -- no, was it more, I have to do the math on that, in that area, well, 470,000.

Q Have you made any preparations to leave New York City at this moment?

A You have to define what you mean by preparations, counselor?

Q Other than purchasing or this transaction in Las Vegas for the condominium have you done anything else to prepare your eventual move to leave New York City?

A Such as what, what do you mean prepare, like call like up a mover or something, what do you mean?

Q Movers, put in storage?

A Buy airline ticket?

Q Yes, anything like that?

A No, I've just been researching job opportunities and just researching Las Vegas in general get information on the city.

- Burke -

Q When did you first sign the contract for that purchase in Las Vegas?

A When was it, end of 2005 -- wait, it would have been the beginning of 2005. Well, that's the thing there was, it was an initial deposit of 10,000 but as you define contract it would have been last summer, yes, I believe, yes, the actual contract there was a down payment, initial down payment before that but it wasn't a contract as such.

Q Other than with your pension accounts here at the MTA or in Fascorp did you apply for a loan anywhere else?

A No, I did not, I was under the understanding, and I knew a year before I would need this money, and of course I had most of the money outside of the account I knew I was going to need, actually I wanted to take out 50,000 which was the maximum I could take out and I knew that this was as of right this was my money, I presumed, obviously incorrectly, there would be no difficulty, I didn't see any need to take out a loan when I could quote borrow unquote my own money which I of course was leaving voluntarily in these accounts and I thought

- Burke -

they were secure and, you know, for my interests so I didn't question it, and when the time came I was actually told I would get the money, I was even given a confirmation number, and I was waiting in the mail for the money and after the money never arrived and hundreds, approximately a hundred phone calls to Fascorp I was finally told this individual, Mr. Acosta with perhaps some attorneys in the general counsel's office here at the MTA were, had frozen my account and blocked my disbursement causing me great distress.

Q Who told you this?

A A number of people, all my calls to Fascorp I understand were recorded, I would certainly like a copy of those if you are able to obtain copies of those calls, you know, I'm asking at this time on the record that I also be allowed to obtain copies for any eventual lawsuits that arise out of this issue.

Q And I'd also appreciate a copy of the tape after you get a chance to duplicate it that you're making of this session?

A Absolutely.

Q Do you have any specific names of

- Burke -

individuals you spoke to?

A Well --

Q Concerning this matter? I assume these were conversations on the phone?

A Right, I don't have it with me. Well, you know, there are so many different people I talked to, I was calling them, you know, approximately 20 times a day for, you know, days in a row, you know, obviously trying to get my money because I saw this was some kind of scam to make me to default on my property to lose, you know, hundreds of thousands of dollars and, you know, I wanted to make sure that I availed myself of every opportunity to obtain access to my money. I wasn't aware, you know, obviously I was dealing strictly with Fascorp/Great West for all this time, I wasn't aware of any authority and I still do not recognize any authority that this Mr. Acosta or the MTA New York City Transit has over my money anymore than my money which was directly deposited in Presidential Bank is somehow under the authority of the Transit Authority, I do not, I believe this conversion is illegal as you may refer to it freezing, converting, blocking whatever the exact definition of the status



- Burke -

of my account is.

Q Is there any claim that your funds outside of the 401-K and the 457 have in any way been interfered with?

A Other than --

Q You mentioned Presidential Bank?

A No, in the same way that my money is deducted out of my check for the 401-K and 457 it goes to Fastcorp my money is deducted and goes to Presidential Bank, these are different accounts I have with different corporations and I don't recognize any authority the MTA would have over already earned moneys that I would deposit in any type of financial institution obviously, and perhaps that's a matter of controversy it will have to be settled in federal court.

Q Just so I understand, the Presidential Bank is where you have your salary regularly sent?

A Part of my salary, I consider it all of my salary, some is obviously tax deferred in the 401-K, 457, and the others go to a demand account at Presidential Bank, other parts go to insurance, taxes, etc., also to pay back this loan.

Q Were you offered any literature

- Burke -

concerning the 401 and 457 accounts when you first signed up on it?

A Well, that's interesting because I first signed up on it it wasn't with Fascorp/Great West it was with Prudential, and I don't know that I had a copy of the contract, I assume there may have been some type of contract either implied or in writing with them, I do not know that I have ever came to any agreement with Fascorp/Great West or that I was asked to approve of this move over to Fascorp, and I do suggest and I did suggest that there was some considerations apparently between Fascorp and Mr. Acosta and whoever else with the MTA signed this contract with Fascorp allowing these individuals to have control over peoples' accounts.

Q You said it was your view that that was the situation, do you have any evidence of that?

A Well, I haven't been able to obtain whatever agreements or contracts of yet either oral or written or the considerations involved between MTA New York City Transit and Fascorp why it was moved from Prudential and what legal or illegal considerations were paid to Mr. Acosta or anybody in the general counsel's office of the MTA.

- Burke -

Q Now, just so I'm clear was the loan you're requesting -- I'm sorry, did you receive any loans from the pension account?

A Yes, I received one loan from my 401-K a general, what's called a general loan where basically if you fulfill the requirements of not having any outstanding loans that it's up to half the amount in your account, I believe up to, up to 50,000 you are allowed the loan with no exceptions, there's absolutely no possible reason for them to block it at all, and it's up to five years and this was the one I had to take because I wasn't allowed to take a loan for my primary residence which was the whole reason for the loan, I wasn't allowed to take any loan from the 457, apparently it is still blocked to this day, for any loan even for the general disbursement loan which is of course what I consider that a criminal act in violation of any alleged contracts that exist.

Q Sitting here today do you have any idea of what the amount is that's in your 457 account?

A What the amount is, it's approximately, what is it, approximately 60,000.

- Burke -

What did I put on the claim?

Q Do you have an idea sitting here today how much was in your 401-K account?

A Approximately the same.

MR. CHIN: It's kind of stuffy in here could I open the door?

MR. BURKE: Absolutely. Let me check my thing.

MR. CHIN: So the record could show that Mr. Burke examined his camera in the interim.

Q Did you ever request any other loans from your 457 account?

A I don't know, it depends what you mean by request?

Q Had you ever received a previous loan from your 457 account?

A No.

Q Do you have any loans out on your 457 account at all?

A No.

Q How many loans do you have out on the 401-K account?

A One.

- Burke -

Q This is the present one you told me about --

A Yes.

Q That you took about 25 out?

A Yes.

Q The general purpose loan?

A Yes, general purpose loan.

Q Now, how do you come to know the difference between the general purpose loan that you took and the mortgage loan that you were requesting?

A Mostly I did this through the web site, they have a web site, what is it, Fascorp.com or something like that, I don't have that information but I applied through the web site, and I guess that was pretty much it. Then I called, there was some initial problem when I first applied for the 457 and I called, who was it, well, I called Fascorp and then I spoke with I guess a Margarita Hahn, and I sent a copy, it was a copy of course of my 50 pages approximately contract plus as I said the one page letter showing when the money was due and when I would be going into default if I did not have all of the money in Las Vegas a certified check. And so I sent that to them and then I was

- Burke -

told the loan was approved as I expected it would and then I would receive, and it would be sent by I believe it was FedEx to my residence a \$25,000 check for this primary residence. And after several days I didn't receive it, and obviously it was still, you know, several weeks away but I was still getting a bit stressed about it and I started making phone calls and getting very little information from Fascorp and trying to escalate it up to management and so on, numbers of calls, and eventually I found this name Solomon Acosta and they wouldn't give me his direct phone number, we were dealing through second and third parties, some kind of bizarre, you know, I don't know if it was phone tag or some other weird construction of, you know, how you conduct business, it was apparently some secret person with some secret number. I eventually did get his number, and I called him, we had one brief conversation which did not go well, he apparently hung up on me.

Q Who was this individual?

A Solomon Acosta.

Q Who did you actually speak to who told you the check was going to be on its way the time

- Burke -

you said that you would be receiving it by FedEx?

A I had the name of the individual, it's all, it's on tape from Fascorp, they said, and I asked them specifically I tried to get through to the president of Fascorp/Great West they wouldn't let me to talk to him, some woman named Peg Lawford I believe, she was about the highest person I would even think of getting in contact with and she wanted to do it all in writing, so I wasn't able to, and I didn't think I had the time to deal with this in writing or that it would accomplish anything of course, and so I spoke with, you know, various managers, they have two offices apparently in Colorado and Wisconsin, you know, I spoke to innumerable dozens of different people at Fascorp/Great West. In fact they sent me a cease and desist letter to cease and desist from calling on this matter I called that many times, and I certainly admit to whatever times, approximately a hundred times in order to obtain access to my moneys and allow me to complete the purchase of my property.

Q Now, at the time that you requested this loan, the loan from the 457 account that you

- Burke -

said was turned down --

A I don't know what you would call turned down, blocked, frozen.

Q That you did not receive?

A I did not receive it, no.

Q At that time where were you living?

A I was living at my current address 145 East 23rd Street.

Q Same address you just gave --

A Yes.

Q Previously. And at that time had you made any preparations to move to Las Vegas?

A Again, you know, I need clarification what you mean by preparations?

Q Any preparations at all, describe the preparations at that time that you had done?

A My preparations were and are ongoing just like anyone else would make for, you know, a move to a different location that was, you know, in whatever time in the future there would be just general research about Las Vegas, about the job markets, generally focusing on as a college graduate of possibly being a teacher or obviously, you know, as well as taking, you know, my experience as a



- Burke -

train operator, become a train engineer possibly out west these were two career options I was considering, but I was open to also doing some perhaps, you know, some business as well, you know, again that's a very vague question what preparations, I'm trying to answer your question but, you know, unless you just want me to ramble about what my preparations were I don't know what else I could add to that.

Q I'm sort of hoping that you could tell me if you had any examples of specific steps that you took to prepare for a move to go to Las Vegas at that time that you requested a loan from your 457 account?

A Well, these steps were ongoing, even before I agreed to purchase the property I was considering moving for quite some time. I lived in New York City for just about 20 years which is much, much longer than I lived anywhere else, I have lived in a number of locations including out west, I lived in Los Angeles, I went to college there, and, you know, New York City is a great city but it's not the only one, and I have considered and considered ongoing moving and this opportunity arose. My

- Burke -

family also purchased property out there and so, you know, maybe possibly my family would be moving there as well, and obviously this blocking of my ability to move to my property or I guess you're implying I have to prove that I am going to be moving there somehow by making some specific preparations, you used the word preparations without really defining it, I don't really know what, you know, what you mean, preparations could mean anything, you know, mental thought preparations or just imagining myself in another location I don't know.

Q That would be fine as well?

A Well then that is fine, you know, I possibly may be considering.

Q In terms of describing what preparations if that's the amount, the extent of your preparations that's what I would like to know about?

A You know, I'm not really as maybe as formal of a person as other people, you know, taking, you know, writing down specific steps taking when they move, you know, I don't have a great deal of property, I have a small apartment unfortunately not much bigger than this room, you know, I don't, I

- Burke -

wouldn't, it wouldn't take a great deal of preparation anyway, I probably would just donate my property which is really nothing that's really too worth, you know, worth too much money and I would move pretty much with my clothes but, you know, even that might go, it's a lot warmer there obviously some clothing I wouldn't need, mostly the preparation was, you know, researching different career options in looking into applying, I know the job market there is supposed to be very good specially a big demand for teachers and so on.

Q Anything else?

A If you could be more specific, you know, if you had a more specific question I could try to answer it, you are just asking a very general vague question and apparently implying you demand a specific answer I don't know that anybody could do that really to be accurate.

Q It's whatever preparations you had, it is an open-ended question?

A Well, that's maybe a polite way, I think it's a vague question.

Q You mentioned some of your family have property out there?

- Burke -

A That's correct, they also purchased property there.

Q Who are your family members you're referring to?

A My brother, my mother and my sister.

Q What is your brother's name?

A Kevin Burke.

Q Your mother's name?

A Kathleen Fitzgerald.

Q And your sister?

A Kelley Ann Burke -- no, Kelley Ann Church, I'm sorry.

Q Where do they live presently?

A My brother lives here in New York and my sister lives in Colorado and my mother she'll be, she lives in California but she'll be moving to Las Vegas.

Q When is your mother moving to Las Vegas?

A On the completion of the property.

Q Has she bought the same condominium in the building as the one that you placed a deposit on?

A That's correct, a different floor.

- Burke -

MR. CHIN: Let the record show Mr.

Burke just examined his camera again.

Q Did your brother purchase property

there as well in the same building?

A Yes.

Q In Las Vegas?

A Yes.

Q Different floor?

A Yes.

Q And your sister as well?

A Yes, I believe for my brother and

sister they would be considered second homes, I don't know they are going to be moving to Las Vegas, they are both married, and, you know, my sister has children and my sister lives outside of Denver, Colorado.

Q Can you describe the type of

condominiums these are in Las Vegas?

A I don't know, the one I bought, I

think my mother bought a one bedroom but I really couldn't afford it so I bought, it's a, you know, I have a studio apartment now but this is a larger studio apartment obviously with a tremendous view apparently so I'm told it will be of Las Vegas

- Burke -

strip.

Q And your brother and sister do you know what type of condominiums they are investing in?

A I believe, did they both buy one bedrooms, I believe so.

Q How many children does your sister have?

A She has one child actually and a stepchild.

Q These are minors?

A Yes.

Q And your brother does he have any children?

A No, he's married without a child.

Q But of your family only your mother was planning to move to Las Vegas?

A Is planning, yes.

Q Is planning?

A The others, you know, presumably will visit us whenever they can.

Q Do you own a car?

A No.

Q Do you own any real property in terms

- Burke -

of real estate property, apartments, condominiums,  
land?

A Just this property.

Q In Las Vegas?

A Yes.

Q Did you take out any, did you have  
withdrawn from your 457 account any moneys during  
this year, 2006?

A I never had any withdrawals at all at  
any time any year from the 457 account.

Q How about your 401 account?

A Other than this one general  
disbursement loan I did manage to obtain at the end  
of August of 2006 I had no other disbursements or  
loans or whatever you want to refer to them.

Q You stated in your notice of claim  
interference with prospective economic advantage?

A That's correct.

Q Is this in reference to the purchase  
of the Las Vegas property?

A That's correct.

Q Is there anything other than that  
purchase, other than that economic advantage you're  
referring to?

- Burke -

A That would be the main, the main part of that obviously, other than that by interfering with my purchase obviously it is interfering with my moving to Las Vegas, so obviously any other economic advantage I would obtain from moving there would also be lost to me but primarily it would be involving the residence, yes. Obviously I'm talking as much about the equity in the property I've already built up it's apparently a higher value than the actual purchase price at this time. They have been selling other identical condominiums for a million dollars and up. They built another building or they are going to be building another building alongside what they sold the same properties for that price so obviously I do believe I have strong ground to stand on when I suggest that the value of the property.

Q I'm just going to go through the items on your claim?

A Absolutely.

Q Attempt to cause default on plaintiff's primary residence, what are you referring to?

A Again, the condominium, the Trump Las



- Burke -

Vegas property.

Q And you referred to fraud, what aspect are you referring to there?

A Well, fraud obviously that could take, you know, many avenues potentially of fraud. Obviously I believe it's illegal seizing of my account, that even the alleged authority for this Mr. Acosta and the individuals in the general counsel's office, Margarita Hahn and Fascorp to freeze my account is an element of fraud I believe, I believe it would be a violation of any contract and as well as any fiduciary responsibility which is presumably for a plan administrator to act in the interests of the plan holder which would be me, and obviously to cause me to default I would contend in court is not acting as my fiduciary.

Q Anything else on the issue of fraud?

A Well, you have to be more specific I think on that.

Q Any other things that you're referring to when you mention fraud?

A Basically all actions or inactions by people, the people named as far as what they did or didn't do including actions or inactions that I'm

- Burke -

not yet aware of, obviously I think there was a great deal of work behind the scenes including obviously as I suggested before possible considerations between Fascorp and Solomon Acosta and other individuals, MTA employees and non-employees involved in any oral or written contracts between them with or without consideration which is against the interests of plan holders in general and myself specifically.

Q Anything else?

A Again, you know, that goes to, you know, obviously discovery and so on other, you know, disclosures on the part of the other side, the other parties would allow me to be more specific as far as what types of fraud.

Q You mentioned tortuous interference with contract?

A Correct.

Q Could you describe what you're referring to?

A Well, I believe, I guess I think to me anyway it seems to be somewhat self-explanatory, I believe there was a tortuous interference, and obviously as an attorney I believe you would be

- Burke -

somewhat aware of the term, I'm not an attorney myself, so I don't know if it's right for me to define the terms, you know --

Q        Whatever you understand it to be, sir?

A        Well, obviously, you know, I have a contract, an outstanding contract for this condominium and I believe the actions or inactions of the parties mentioned in the notice of claim as well as possibly others tortuously interfered with this contract to my detriment and possibly I believe to their gain, potential gain which is the element of fraud as well. It goes, there could be some agreement with the developer or some individuals within the development because if I'm going to default they would own the property and they would gain approximately half a million dollars in the equity so obviously there could be some illegal agreements between the parties, Mr. Acosta and company and the plan and the condominium developer potentially in order to have this property convert to other ownership.

Q        So the contract you're referring to is the contract to purchase the condominium in Las Vegas?

- Burke -

A To complete the purchase, yes, and --

Q Anything else?

A Well, there's other --

Q Concerning the tortuous interference

with contract?

A Well, obviously I did mention I

haven't been given any copies of other contracts, but other contracts that I'm interested in which may or may not be involved in are any contracts between Fascorp outstanding and the Authority alleged or actual contracts, legal or illegal contracts.

Q When you're saying the Authority

you're talking about New York City Transit Authority?

A That's correct, or Mr. Acosta

personally, New York City MTA New York City Transit obviously as I mentioned there was a changeover from Prudential which I don't know but, you know, I can believe that Prudential being perhaps a more professional organization and perhaps not giving the correct considerations to Mr. Acosta is more involving his potential seizure of accounts they were changed over to Fascorp and there's apparently some outstanding agreements between Fascorp and

- Burke -

individuals who work for the MTA.

Q Do you have specific -- sorry, did you finish, do you have anything more to add?

A Well, just that I would like to have access to those contracts, if I am party to those contracts I should be allowed to review them, all contracts and all negotiations involving those contracts.

Q But you don't have any specific contracts in mind when you're referring to those side agreements you're talking about?

A I do but I do not have actual possession of the contracts but I cannot imagine there is not outstanding contracts between Fascorp and MTA New York City Transit.

MR. CHIN: Let the record show that

Mr. Burke placed in a new tape.

Q Was there anything else that you wanted to add to the reference to tortuous interference with contract?

A Well, obviously the main thrust was the tortuous interference with my contract, my specific contract to complete the purchase, to purchase the Trump condominium, but I did mention

- Burke -

those other contracts as well that I do not have access to.

Q You also referred to conspiracy to induce breach of contract?

A That's correct.

Q Is there anything in this reference that you have not already discussed?

A Well, obviously maybe the operative word in that sense would be the conspiracy is obviously involving more than one person, I'm absolutely alleging that this is conspiracy involving more than one person. I did name Mr. Solomon Acosta, I believe also Margarita Hahn has some relations, you know, obviously business relations with Mr. Acosta and apparently, again I guess it would be somewhat hearsay I was under the impression that Mr. Acosta was in consultation or under the authority of an individual in the general counsel's office, one or more individual attorneys who advised or ordered or allowed or were noticed of this activity or inactivities by Mr. Acosta in violation of his fiduciary duty as well of his job description and of the law.

Q Other than what you've just described

- Burke -

is there anything more you would like to add to your conspiracy reference?

A Well, obviously any conspiracy involving any illegal considerations or transfers of value with regard to any contracts between Fascorp and Mr. Acosta specifically and the Transit Authority in general as to why it went from Prudential to Fascorp and what, as I said, illegal or illegal considerations or access to accounts as well as rights to freeze peoples' accounts mine and/or others.

Q Anything else?

A The one regarding to the conspiracy aspect?

Q Yes?

A Well, obviously that would be something that would, you know, have to be proven, I would need access to, you know, obviously documents and possibly depositions of the individuals involved as well as access to any phone calls, taped phone calls, meetings, memorandums and so on between Fascorp/Great West and MTA New York City Transit including but more specifically general counsel's office.

- Burke -

Q Anything else?

A Not at this time.

Q You refer to a negligent

misrepresentation as fiduciary?

A That's correct.

Q What are you referring to there?

A Well, my understanding is Mr. Acosta

or if he is actually the plan administrator and whatever or whatever other titles he's assuming, a plan administrator has the primary job description as a fiduciary for plan holders and obviously this gets into, you know, a description or a legal description of what fiduciary is, what I'm given to understand the individual who acts in the interests of, financial interests of and obviously I don't think that freezing my account or seizing or converting it and attempting to cause a default on my home is acting as my fiduciary, again that would be something for a jury to decide I guess.

Q Anything else?

A Well, I guess more generally any other individuals who have the legal description of fiduciary within Fascorp or the Authority.

Q Anything else?



- Burke -

A If any of the attorneys are involved, I don't know that they are or are not required to act as fiduciaries in this instance.

Q Anything else concerning negligent misrepresentation as fiduciary?

A No.

Q You also mention negligence, just negligence by itself is this any --

A Negligence would be more broad obviously than with the fiduciary because perhaps not all people involved were necessarily fiduciaries as I mentioned including various attorneys involved, employees of Fascorp who may not be in a fiduciary position.

Q But the specific acts involved would be the same as what you described previously for negligent misrepresentation or something else?

A No, that would be, well, obviously we're dealing with both what's known and unknown, we know or I know what they did and didn't do in regard to obviously disbursing my loan, obviously what went on behind the scenes, you know, as of yet obviously, you know, as far as the question of evidence obviously I haven't gone to great lengths in

- Burke -

gathering that evidence, you know, it's an ongoing process obviously I have filed, you know, suit, and so ongoing through that process but so, you know, I wouldn't have anything more to add at this time about negligence, no.

Q You referred to civil conspiracy, is this any, is this separate from the conspiracy to induce breach of contract that you described earlier?

A Well, the civil conspiracy, obviously I'm alleging conspiracy involving more than one person, again this would include Mr. Acosta, Margarita Hahn and any attorneys who did in fact advise or order whatever Mr. Acosta as well as involved in any illegal contracts between Fascorp and MTA New York City Transit as I mentioned either oral or written, any illegal considerations and obviously generally involved with this case.

Q Anything else?

A Well, at this time obviously not having gone through discovery, etc., you know, any disclosures, mandatory disclosures under federal law, you know, this case has not quite been developed yet so I can't, you know, fully encompass

- Burke -

what all the conspiracies that allegedly or did occur or are occurring ongoing.

Q But other than --

A Or in the future.

Q But other than what you described so far that's all you're aware of at this moment?

A Well, obviously, you know, we're talking to implied what seems to be the case as far as conspiracies or what, you know, actually that I know has occurred, you know, these obviously might be two different things, you know, you know, I currently deal with logic and my admittedly lack of information, obviously information has not been disclosed to me at all so obviously, and it's not surprising that I would be outside the loop of the conspiracy as I'm the victim of it or one of the victims, potential.

Q So at this moment do you have anything more to add to your description of the civil conspiracy that you referred to in your claim?

A Well, obviously I don't know if you're getting to the last part the RICO Acts, obviously RICO includes predicate felonies a number of obviously I'm somewhat aware of, you know, the law

- Burke -

with regard to the RICO Acts and, you know, obviously I'm contending there's sufficient cause to be covered under the RICO Acts and possibly civil conspiracy in some of these other acts, as a non attorney of course I might contend that in court that they would fall under that act so we're talking about the same and different things at the same time.

Q Okay, let's talk about the RICO Acts then, what are you referring to in the RICO Acts?

A Well, obviously any predicate corruption involving overall contracts or illegal considerations between Fascorp and the MTA New York City Transit, specifically Mr. Acosta and/or any attorneys, Margarita Hahn, etc., employees of both corporations or corporation authority named and unnamed, ongoing predicate felonies that I believe are covered under the RICO Acts.

Q When you're referring to the predicate felonies what are you referring to?

A Such as previously mentioned is illegal conspiracies and tortuous, well, not just tortuous acts of course but criminal acts I believe, and I believe I did mention that I did bring this to

- Burke -

which I understand is not an independent inspector general's office, I did bring, it's not just to the inspector general's office I brought it to the New York City Police Department and I'm considering and I have considered bringing it to other authorities federal, state and local that I believe this is not just civil but criminal acts ongoing.

Q Anything else you're referring to when you're referring to the RICO Acts?

A Well, obviously I believe any, you know, any illegal conversion, seizure, you know, any financial crimes in general by any conspiracies by these individuals which again, you know, this is my claim of course, I understand that this would be covered under, you know, Racketeer Influenced & Corrupt Organizations Act U.S.C. 18 1961 through 68 --

Q Other than what you've already described --

A Section 36.

Q Anything else for the RICO Acts?

A Well, obviously it would also bring in, for RICO Acts any other predicate felonies which may not even be involved in this case just general

- Burke -

corrupt acts, obviously the MTA as been considered by some as the most, you know, corrupt agency in the history of mankind, so I don't know whether that would become part of the case that would be up to I guess the judge.

Q You also refer to mental anguish?

A Yes.

Q What are you referring to there?

A Mental anguish, obviously specifically related to attempts to cause a default on my property and to lose as I said this half a million dollars in equity and deposit on my property, and as well as what I mentioned previously, you know, the tortuous interference, etc., and conspiracies, etc., it's an unlawful freezing or converting, etc., of my accounts caused me a great deal of mental anguish.

Q Anything else?

A Well, if you could be more specific maybe I could answer you, it's kind of, anything else, I guess I'm not an attorney I'm sure that term is used a lot but I don't know if that would be considered a question.

Q Well, have you ever been treated or counseled or gotten therapy for any emotional or

- Burke -

psychological matters?

A Well, that's a good question, certainly no I haven't, I wasn't treated with this, obviously as it's known the MTA, you know, controls what used to be called the Health Benefit Trust and as far as I know they have access to medical records and these are used by people in, you know, for instance the general counsel's office to get people terminated I believe illegally and in violation of civil service law and the contract, and obviously whatever treatments, you know, I have my own opinions about I did take a great deal of psychology even though my degree was in economics and so I have my own opinions about psychology and psychology, obviously I feel any so-called treatments I would do would be used against me and result in my termination so I decided that in that instance discretion was the better part of valor and I didn't seek any medical treatments.

Q What is the highest level of schooling you've achieved?

A I have a Bachelor's degree, what do you call it, a Baccalaureate from the University of California Los Angeles.

- Burke -

Q What was your major in?

A Economics.

Q Did you have any minors?

A In psychology and accounting.

Q When did you graduate?

A 1984.

Q Other than economics did you have

another major?

A I did attempt to get another degree in

psychology but because I applied for the major too

late I wasn't allowed to obtain a dual major with

that, and the accounting was just a minor, you

couldn't major in accounting there so I took all the

accounting classes they had.

Q Have you taken any post-graduate

studies?

A Very briefly at the London School of

Economics.

Q When was that?

A 1985.

Q Did you complete those studies?

A No.

Q Why did you leave?

A There was problems with renewing my



- Burke -

visa and obtaining financial aid.

Q Concerning the treatment for any emotional or psychological matters not only about this incident have you ever received any in the past treatment, counseling or gotten any type of therapy for those matters?

A No.

Q Are you claiming any emotional injury as a result of this matter?

A Well, yes, I mean how do you define emotional injury?

Q Well, how would you describe the nature of the injury that you're claiming?

A Well, about the maximum amount of stress caused by illegal and tortuous acts that, you know, certainly any individual outside of say jail or being physically tortured could undergo these criminal acts, this attempt to, you know, illegal attempt to cause me to go to default in my home, I mean obviously anybody who attempted to steal someone's home, you know, freeze their major assets illegally it would just be I would believe the general public average individual would undergo a great deal of stress and certainly in that context I

- Burke -

would have to consider myself an average individual.

Q Other than what you've already described, anything else?

A Well, the stress is ongoing, because, you know, even involving this claim and obviously I contending, is my understanding this account is still frozen, I'm going to have to still obtain a mortgage with the amount being deducted from my check to pay off this five-year loan instead of what should be a 20-year loan I'm going to have very much difficulty in obtaining a mortgage and I could still go into default obviously even though I've already paid the 20 percent deposit, so obviously the stress is ongoing. And it was much more concentrated there at the end of August and the beginning of September when I had an absolute deadline which was at that time very near, obviously I passed that deadline but I haven't yet until I obviously obtain a mortgage and pay off the full purchase price, you know, I haven't yet completed the purchase of the property.

Q Anything else in terms of the emotional injury you're claiming?

A Well, it would depend, obviously, you know, it's been told that I'm going to be terminated

- Burke -

from this job because of attempting to seek remedy and I believe there's perhaps some, you know, histories involved with that I certainly maybe, you know, perhaps working in the general counsel's office you might be aware more yourself of people who are illegally terminated with or without remedy, you know, as civil servants under contract, obviously this deposition I may or may not be terminated of this act of attempting to obtain remedy as an American citizen obviously that would additionally cause me stress of mental anguish, etc.

Q Anything else?

A You know, unless you are more specific I can't add to that.

Q Have you kept any records or are there any records of what you've been experiencing mentally?

A No, I don't keep a diary, I never did, there's never anything that interests me, it seems if you're someone just talking to yourself and writing, I try to get, you know, over it, around it, I try to actually get it more out of my head than, you know, try to do different things that would, you know, hopefully relieve some of the anxiety and

- Burke -

stress involved in, you know, being a victim of these criminal acts but, criminal and tortuous acts, but, no, I never kept any records.

Q Other than our discussion here right today who else have you told about the mental problems related to this incident, this matter?

A Well, I did discuss in general and specifically with a number of people this case, more specifically at the general motorman's meetings as well as other meetings by the union because I felt that people should be aware that there's individuals at the MTA New York City Transit who feel they have a right to seize peoples' accounts or whether 457, 401-K, presumably bank accounts and so on, and I did want to add it wasn't part of the claims as of yet and, you know, obviously you have a right to dispute me adding any legal aspects to the claim but I believe it's the Fifth Amendment of the United States Constitution about, you know, converting or seizing property that, you know, either with or without due process, I don't have the amendment with me, but that it has to be any properties seized by a government have to be compensated.

Q Well, I was more focusing on the who

- Burke -

have you told about your mental problems?

A Well, I discussed this in general with a number of people, as I said colleagues at work and so on some of who have 457's some who do not.

Q Who are these individuals you have spoken to?

A Well, I've spoken at general motorman's meetings so, you know, where you stand up and you speak in general, they were very interested in this case, and there's a motorman's meeting tonight at 6 I'll be doing it again mentioning this deposition of course, and a number of people, I guess it was the chairman of the motorman's division, Curtis Tate, I don't know if I maybe mentioned it to the incoming chairman, I believe he's the chairman or vice-president Steve Downs, D.J. Smalls, he's a board member, some of the names of people, a number of people, Richard, in fact someone mentioned to me I think it was Richard DeJesus, that's his name, who mentioned to me I wasn't able to find it but apparently there was a notice or memorandum put out by the MTA somehow involving this and he suspected it had something to do with my case, I was trying to get a copy of that,

- Burke -

if you could I'll get a copy of that they put out regular, I don't know if you're aware some of it might come out of this office, some of it may not, regular memorandums and notices and bulletins go out to the field, we're supposed to read and we do read and hopefully, you know, covering different topics, apparently there was some notice or bulletin regarding this 457 account or rights of the MTA to, I haven't read it but it had something to do with the right I guess to seize peoples' accounts I guess ex post facto whatever.

Q Do you know when this, when you heard that this memorandum came out?

A That's what I was trying to look it up myself, I believe in October perhaps, early October.

Q Of this year?

A Yes, certainly I would like to obtain a copy of that.

Q So this general motorman's meeting this was just, this was an open meeting?

A Correct, well, open to any, well, obviously I guess any union member, only motormen are really allowed to address generally the meeting, you know, motormen in good standing.

- Burke -

Q This is, which union is this?

A The Transport Workers Union Local 100, it's held at 60 West End Avenue New York, New York.

Q Anyone else you spoke to about these mental problems?

A Well, I don't know your construction of discussing mental problems --

Q I'm just focusing, this deals with --

A Is this a medical term or legal term?

Q This is relating back to your claim of emotional injury and mental anguish?

A Well, probably more that I evidenced this stress to them in discussing more specifically the details involving the seizure, you know, I guess I'm not really the type of personality, you know, to discuss, you know, as you construct mental problems with someone else, I don't know that that really accomplishes anything, I feel dealing with the underlying motive would accomplish more, obviously, you know, if I'm sitting in a fire and I'm describing to someone this gentleman for instance wow, I'm feeling hot, it's not that comfortable, you know, I'm feeling kind of stressed I think would make more sense for me to get my rear end out of the

- Burke -

fire essentially and attempt to remedy the problem than to simply discuss it, you know, to someone who's obviously not a medical person.

Q Well, let me just rephrase the question as well then, perhaps as a clarification, other than who you've described have you told anybody else about these emotional injuries and mental anguish that you've experienced as a result of this matter other than what you've already explained?

A Well, wow, you know, you know, I guess I do understand your question but, you know, again, you know, I'm not someone just in the context oh let me describe to you my emotional and mental injuries to you for a moment, that's something I could never imagine myself doing, it's just something that is so, you know, you know, far outside the realm of, you know, anything I would ever discuss with someone, I generally discuss specific things not, you know, my mental state, you know, I don't know, again, you know, I guess either one of us would have to be more specific I don't really, you know --

Q Okay?

A You know, you would have to elaborate



- Burke -

more exactly what you mean I think for me to answer that accurately.

Q When was the last time you ever saw a psychologist or a psychiatrist?

A You mean socially or --

Q Professionally, in some professional context?

A Professionally, I mean as a student/teacher thing or as a client you mean?

Q Either as an examination or the client the last time you spoke to one was when you were back in UCLA?

A You know, I probably may have ran across, I've had, you know, people I knew who were in those professions, you know, I may have had a conversation with them.

Q Not in a social context I'm only referring to in a professional context?

A Nothing that I recall.

Q Have you ever thought about suicide?

A No, as a practicing catholic it would be against my religion.

Q So you never attempted suicide either?

A No.

- Burke -

Q A question about your dark glasses, is there a medical reason why you're wearing them?

A Well, I do have a slight case of what they call photophobia, I happen to lost my prescription glasses, I'm in the midst of getting some new glasses so these are substitutes.

Q What is photophobia?

A It's a sensitivity to light. I also have myopia as well, nearsightedness.

Q Are you taking any medications for any of these things?

A No, the only medication I believe I was told for photophobia is Ritalin which would I believe be outlawed by the MTA, you know, perhaps reasonably so so I just use corrective lenses which I'm required to do for my work.

Q Actually how are you feeling today, are you feeling, have you had any problems understanding my questions today?

A No.

Q You understand English obviously?

A Yes.

Q Did you take any medication today of any sort?

- Burke -

A No, I'm under no medications.

Q You've never taken any medication for depression?

A No.

Q Have you had any nightmares concerning this matter?

A Perhaps, you know, obviously getting to, you know, what is a nightmare, what isn't a nightmare obviously I've lost a great deal of sleep over it which has affected my job, you know, potentially, you know, obviously, you know, nothing negatively happened on my job which is what I consider, I guess it's referred to as a safety sensitive occupation so obviously potential lack of sleep which we're required to get our rest which I might, legally required to get our rest for this specific job is interrupted and interfered with, so interfering with not just my job but potentially with the safety and well being of the public itself.

Q Other than what you've described any other types of, anything else referencing nightmares?

A Well, again, you know, nightmares is I don't know, that's kind of, you know, you're an

- Burke -

attorney not a psychiatrist, not pretending to be, but nightmares is kind of a vague term, obviously as I mentioned I did have a great deal of stress specially around the time end of August beginning of September when I was facing this loss of, you know, the vast majority of my assets, over 90 percent of my assets that I've earned basically over my lifetime caused by these criminal acts by these individual employees as well as employees of Fascorp.

Q When you say 90 percent of the assets you owned are you referring to the amounts, what amounts --

A Obviously my investment in this property as well as obviously my 457 account as well. Obviously my lack of access to that account what would have been or what would be a default of my property, this half a million dollars in equity and deposit money I put into this property is the vast majority of my outstanding assets.

Q By the way, did you have anything to eat or drink today before coming here?

A Yes, I had cereal, juice and some milk and tea.

- Burke -

Q You didn't have anything alcoholic?

A No.

Q Have you ever taken any illegal drugs?

A No.

Q Have you ever been deemed mentally

imcompetent for any legal proceeding?

A No.

Q Have you had any serious illnesses or

injuries before?

A Serious illnesses, no.

Q Whatever you would consider serious?

A No, I wouldn't say I did.

Q Have you consulted an attorney about

this matter?

A Well, it gets into, you know, what do

you mean by consult, and also it might violate, it might be privileged.

Q I don't want to know the details of

the description I just want to know whether there was any representation by any attorney on this matter?

A There is no representation, there was

no agreements about any representation at this time.

Q Now, you mentioned that you had made

- Burke -

complaints to the inspector general's office?

A Exactly.

Q Who did you speak to at the inspector general's office?

A Two people primarily, a Theresa Smith, she's a, I guess an investigator is her title and a Mr. Nicholas Kapoor who is an attorney and and investigator for the inspector general's office, and they claim that they did do, I believe they did some investigation though I certainly did not acknowledge it being sufficient or correct.

Q Did you speak to anybody else?

A I think I spoke to one other person because they did initially apparently want a cost investigation, I tried to speak to the head of the inspector general's office who was at the time the head of the inspector general's office, his deputy, I got someone in his office and then they did sort of reignite the investigation and again I dealt with Mr. Kapoor both over the phone and in person.

MR. CHIN: I'm going to try  
opening the door a little bit it's kind of  
stuffy again.

Q Other than the, you also mentioned

- Burke -

speaking to the New York City Police Department?

A That's correct.

Q Who did you speak to there?

A I spoke to a number of people, I believe, what department was it, some detectives if I could remember, I don't know if it was in the Transit Bureau or, no, in fact I also attempted to and I did call the MTA police as well but they claim they only had sovereignty as such over the Long Island Railroad and Metro-North, I didn't necessarily agree with them either about that but, you know, I do know a number of police officers and so, my grandfather was a police officer I know that sometimes they rather like many other people not do their job for various reasons.

Q Did you speak with the New York City Police Department by phone or by person?

A By phone, by phone.

Q Do you remember which number you called?

A I think I went through the Transit Bureau and then I got sent to, there was a division dealing with different types of financial crimes but they apparently were more about, you know, people

- Burke -

swiping credit cards and using them, frankly it seemed the crimes I alleged were perhaps a little bit more complex than they wanted to deal with at that time, they seemed to think that the only possible crime again in the inspector general's office that Mr. Acosta had apparently removed the money and like Mr. Callico bought a Ferrari with it or spent it on, you know, prostitutes and cocaine or something which, you know, is not something I agreed with obviously, I think simply unlawfully freezing someone's account for potentially fraudulent reasons is a criminal act in and of itself but again, you know, that would, people make their own decisions on things.

Q Do you have any specific names of a police officer that you spoke to?

A At this time obviously I'm under oath here and I don't, I spoke to primarily two different ones, a male and female detective, and just to be honest which I am, I'm hoping I am honest I can't, you know, I don't, I can't recall their name.

Q Do you remember when you called them?

A It was around this time, end of August, last two weeks of August when this was



- Burke -

really hopping.

Q Other than the inspector general's office and the New York City Police Department and this office any other government entities that you've contacted?

A I mentioned MTA police, yes, I called the comptroller's offices both city and state.

Q The city and state comptroller's?

A Yes, it was, which one is the, there's actually a federal authority over, it's generally over 401-K's, 457's, what is it, is it the FCC, no, F, it seems though for whatever reason it may even be what I've been doing research that somehow because it's MTA, you know, to borrow a term no controlling legal authority over these accounts which I guess is great for the MTA, you can steal this money and that would have no remedy but obviously, you know, I don't necessarily believe that, some federal authorities seem to think that this falls through some loophole that there is not any actual regulator which is interesting involved with this situation.

Q So do you have the name of the federal person you spoke to?

- Burke -

A At this time I do not, I'm trying to remember the agency that would probably help you some.

Q Do you remember the time that you called?

A It would have been, you know, again at the end of August.

Q Did you exchange anything in writing or send anything in writing to them?

A I do not believe so, no.

Q At the comptroller's office, this is two separate city and separately the state?

A Oh, and also the attorney general's office as well I believe I might have talked to the state attorney general, I was planning on speaking with, you know, the federal government as far as the United States Attorney's office on this.

Q Do you have any names of individuals you spoke to at the city comptroller's office?

A No, whoever answered the phone.

Q What was the resolution of that matter?

A They, you know, obviously people, you know, they said in my opinion try to weasel out of

- Burke -

doing their job and they tend to pass the buck it doesn't sound like something we cover, I don't know, whatever, you know, you know, basically a kissoff.

Q Do you have a name of anybody at the state comptroller's office?

A No, obviously I asked for was Alan Hevesi, I didn't get him I know that but it was somebody in his office.

Q What was the resolution of the matter with the state comptroller's office?

A It certainly wasn't a positive resolution I can't state, I think the state department of labor I talked to in fact and also the federal department of labor, that's right.

Q Do you have any names --

A I think I was getting a little closer there.

Q Do you have any names of any individuals you spoke to there?

A No, again it was who answered the phone.

Q How about the A.G's office?

A I might, I don't know if I talked to them in person, it's very difficult to talk to the

- Burke -

A.G.'s office in person they like to do it over the internet, I might have done it over the internet with them like an internet complaint, again, you know, I was calling, you know, this was a time I was making, you know, I guess you might say, you know, over a hundred phone calls, certainly dozens of phone calls just to different agencies as well as to Fascorp and Transit Authority as well, including I called the general counsel's office here and tried to speak to, I believe it was a Ms. Steel about the only name I could remember, I then tried to speak to, in fact I left a message to the attorney who was, you know, accused again of, you know, obviously accused of consulting with Mr. Acosta, perhaps being in conspiracy with.

Q Do you know the name of that attorney at this time?

A At this time?

Q Yes?

A If you say a name I could probably remember it but it sounded like kind of a Greek name.

Q Do you have any written documentation of any of these calls or communications with these

- Burke -

agencies?

A Certainly I don't know that I do, you know, if I made some notes or something I don't know, you know, I didn't bring anything with me.

Q I'd ask that you preserve whatever documentation you have?

A I would do that anything I have. I would ask again the same with the other parties involved including especially I did ask Fascorp to, in fact I went into them about the phone calls how long they keep them and they said, you know, some cases six months, in others forever, and I asked that they keep that pending any litigation, again I would ask that MTA New York City Transit preserve any records, and I would do likewise.

Q By the way, the photophobia you have is it diagnosed as a medical diagnosis?

A Yes.

Q When did that occur?

A Well, I guess it's an inherited condition from my father, but apparently I did make it worse when, I'm a skier and I used to ski without tinted lenses and it tended to damage somewhat my retina and help make it sensitive.

- Burke -

Q Other than these agencies you described any other government agencies you might have left a complaint with?

A I could tell you I called everyone I could think of just about, you know, I didn't go to, did I go, no, I didn't go to congress but it might have been some other ones, yes, state, federal and city, for instance I might have even talked to the federal reserve bank.

Q Did any of them have anymore follow-up with you other than through the phone calls, any of your initial phone calls with them other than what you've described already?

A Did I get something from the attorney general's office, maybe just an acknowledgement letter maybe, you know, understanding obviously the attorney general's office is in transition right now but I spoke to a number of people within MTA, I called all the way up to Katherine Lapp's office, all the bosses of Mr. Acosta, apparently at least three levels above him as well as I mentioned the general counsel's office here and, as I said, you know, obviously the MTA police but other federal agencies --

- Burke -

Q Any agencies, state, local, city, federal?

A I probably did, maybe the public advocate's office, maybe the mayor's office, I don't think I called the governor's office, yes, I was pretty much trying to find out who was, you know, again the controlling legal authority or the regulator of these specific types of accounts for a state agency and as of yet I haven't reached complete success with that.

Q Other than government entities were there any groups or organizations that you contacted concerning this matter?

A Other than the union, as of yet did I do that, I'm trying to think, you know, I might have but it's not ringing a bell right now, you know, I certainly acknowledge making a significant number of phone calls regarding this topic in reaching out to a number of people but nothing that I could think, non government, you know, other than, you know, if I, you know, I'm not saying if I have or haven't if I've ever spoken with any attorneys that would be one possibility I guess.

Q Other than the folks you've already

- Burke -

mentioned from the union anybody else at the union that you spoke to concerning this matter?

A I did want to speak with their attorneys, I didn't, I didn't get to speak with them yet, I was supposed to speak with them about some outstanding grievances I was going to plan to bring it up at that time, I'm sure counsel's times are valuable, Randy Nevels, he's maybe I guess another person, you know, you know, I spoke at another meeting that was, you know, obviously there was, you know, people running for office and so on, it was held in Brooklyn and I brought it up, I spoke about it, I had a number of people who were running for office, one office, you know, I spoke in general I guess you say soto vos, to the public at large, was at the auditorium about this matter and obviously, you know, try to put them on notice about this MTA's presumed right to, you know, seize or convert peoples' accounts and operate as antifiduciaries.

Q Nobody specifically, no other specific union official?

A I might have been to a shop steward's meeting I might have mentioned, I was at shop steward classes I took, you know, ongoing I might



- Burke -

have mentioned it there for, you know, the people that get the shop steward class.

Q When did you speak to Randy Nevel?

A Well, it probably would have been, there's a motorman's meeting every third Wednesday of the month and I believe he was at the last meeting and I would have spoke to him there last month as there is as I mentioned tonight there's another meeting, I don't know what day of the week, you could look on the calendar.

Q And the shop steward classes when did these occur that you might have spoken to them?

A It was, you know, in September I believe.

Q All of this year?

A September, yes.

Q The other union officials that you mentioned earlier you would have spoken to them all at these meetings, did you go --

A Mostly, I go to every meeting unless, you know, my, what they refer to as regular days off are illegally in violation of the contract illegally changed which was one of my grievances, I missed one motorman's meeting this year because of that, but

- Burke -

otherwise I attend all of them and obviously I bring up various issues, you know, and certainly something like this is of interest to the members.

Q So when did you seek to Chris Tate about this matter?

A More than once, I spoke to him more than once, probably at least starting in September at least I spoke to him, you know, I spoke to him as a shop steward, you know, maybe not in regular contact with him, at least monthly contact, sometimes I call on the phone to the union, occasionally drop by the office there at 60 West End.

Q What was his response to you?

A Well, he said I should talk to the attorneys, you know, obviously he's not an attorney and he was, you know, you know, I guess somewhat, you know, disappointed to hear that, you know. Just to be perfectly frank some members of the union do not always have, you know, a highest degree of respect for management for whatever reason I don't know, so they tend to, you know, be not so surprised when certain instances like this occur to them it's just, you know, one more thing.

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- Burke -

Q So Chris Tate suggested you meet with the union attorneys?

A That's correct.

Q When you're referring to management you're referring to the MTA management not the union management?

A Yes.

Q When did you speak with Steve Downs?

A It would have been probably at one of the meetings he goes to, you know, most of the meetings as well as he would have to as, you know, he's running for office he would go to the meetings. I also see him in the yard he works or he worked at 207th Street yard he was in the A.M.'s.

Q But did you speak to him about this matter in the yards or just at the meetings?

A I might have spoken to him about it but, you know, in the yard, you know, he's dealt with a lot of different things, so I didn't try to take up too much of peoples' times which I'm not really sure they could do something about it, it's more noticing about an issue than really be expecting to be resolved by them, I didn't think myself it was really within their power but they

- Burke -

thought they could do something they didn't really come up with anything other than what Mr. Tate.

Q Did you speak to the union attorneys?

A Not yet.

Q Not yet?

A I spoke to them about other issues, you know, previously but I haven't spoken to them actually since this time, I was expecting to talk to them about my outstanding grievances, they were supposed to have a meeting, a scheduled meeting with them about that and so I was going to bring up about this issue as well.

Q What outstanding grievances do you have?

A Well, there are two but they are actually broken into three because one of the grievances was split into two, it was regarding, one, it was regarding the changing of my RDO's and tours which is I believe against the contract, it is against the contract an order for the Transit Authority calls training which is some kind of undefined term which I guess but their construction can encompass anything including work, it's all work, that's one grievance. The other one was

- Burke -

involving I mentioned previously the violation of the education law of New York State practicing a profession without a license that profession being medicine by the sick desk them diagnosing or referring, etc., etc., medical complaints or, you know, medical situations without any medical training at all and it's a Class E felony one to four years, this is one of the things, I actually did also bring that to the inspector general as an informal complaint, I didn't do it as a formal complaint yet, they said because the grievances was ongoing they thought it was for some reason a worker management issue which is interesting, I guess it is essentially, there is also criminal acts but that was my second grievance was involving him holding me out of service illegally, using my sick time up for what they construed and for some reason it turned out to be incorrect, but not only was it incorrect but obviously I believe it was illegal of course for them to diagnose me whatever.

MR. BURKE: Excuse me.

MR. CHIN: Let the record show Mr.

Burke checked his camera, and we just had to add more paper to the court reporting

- Burke -

machine.

MR. BURKE: I have about three minutes I was going to put in another tape, that's all right.

MR. CHIN: How long are these tapes anyway?

MR. BURKE: One hour.

MR. CHIN: I think we'll just burn this tape out then.

Q I just want to clarify, I didn't quite understand the three grievances that you have, one is for the changing of the RDO?

A Actually it's two grievances because labor relations wouldn't join in it was two identical issues, they did it twice, in fact they did it three times, they did it again recently and this time they didn't even give me eight hours between jobs which was violating federal law but, you know, you guys can do what you want I guess it's within the authority.

Q Is there a pending hearing for these three grievances?

A Yes, I had Step One and Step Two and I did receive an answer in the Step Two for the change



- Burke -

of the RDO's which wasn't surprising, of course you could imagine what it was, and as far as the criminal acts involving the sick desk I have yet received no answer and this was, these hearings were during the summer, you know, obviously well past their contracted allowed time to respond.

MR. CHIN: Let the record show Mr. Burke has added a new tape to the machine. Are these digital tapes?

MR. BURKE: Yes.

MR. CHIN: Eight millimeter digital?

MR. BURKE: No, DVD, DVC I guess ditigal, compact digital.

Q When you mentioned, going back to the notice now, you end up the paragraph with the nature of the claim with an ect., or E-T-C, did you have anything more that you wanted to add to that?

A Yes, obviously I did want to mention at the very minimum in the United States Constitution, I believe it's amendment, is it Amendment Five about takings of property by the, by government, I don't know if it's referred to by federal government that it has to be duly compensated and obviously I believe this is a taking

- Burke -

of my property by the government.

Q Anything else?

A Well, obviously you know, the RICO Act itself involves, you know --

Q I meant other than what we've described?

A Yes, no, I'm going to mention the RICO Act regards potentially other, you know, predicate felonies, you know, as a requirement, and so obviously anything that would be covered under that, so.

Q Anything else?

A Well, obviously the criminal acts but, you know, in the civil suit, you know, obviously I can mention them, I'm not a prosecutor so, you know, you know, if I had the authority I would but I'm not so I guess it's pretty reasonable I wouldn't have the authority, as a victim I guess you want someone more objective apparently to decide whether something is or isn't criminal obviously, you know, I'm contending it's ongoing criminal acts.

Q Does the etc. or the E-T-C that you mentioned in the nature of the claim refer to anything more than what you've already described

- Burke -

today?

A Well, obviously etc. would tend to include anything involving specifically any, you know, new or new to me anyway information involving, you know, you know, criminal acts and civil torts against me and, you know, possibly against other people but obviously, you know, arising out of this claim but potentially, you know, any type, you know, of corruption would be for instance included within a RICO claim even if it's something that's really not necessarily related to this claim from my understanding of RICO Acts.

Q Other than what you've just described is there anything more you would include in the etc. or the E-T-C that you mentioned in the notice of claim?

A Well, I guess, you know, not really to elaborate on what I just said, you know, obviously, you know, we have, you know, this claim itself the acts or inaction of certain, you know, individuals the party, you know, mentioned previously MTA New York City Transit, you know, as well as named individuals including Fascorp/Great West but, you know, obviously, you know, I guess what you want is

- Burke -

it you're asking the size of the umbrella potentially in a RICO case or you want to know specifically etc., I guess, you know, including, you know, other potential elements that, you know, might be uncovered for instance I guess in discovery or to be added, for instance, you know, if I was to obtain counsel or, you know, an attorney or attorneys, you know, a law firm was to represent me in this matter they might, you know, attempt to try to, you know, adjust the claim, you know, to more accurately reflect their own, you know, legal view of the matter.

Q But at this moment in time do you have anything more to add to your description of the etc.?

A Well, etc. obviously probably comes, I believe it comes out after the mention of RICO Acts, it's more, it's covering the RICO Acts in the sense of etc. would be including more claims under that act or as well as, you know, anything that I would come up with new, you know, for instance in discovery if I discover an illegal contract, illegal considerations between Fascorp and individuals, you know, including Solomon Acosta obviously, you know,

- Burke -

that would, you know, be something would be more specific. I understand you would have me rather be more specific but, you know, at this time I'm not, you know, having not gone through discovery, etc., or depositions of anyone else what you're doing one of me right now, you know, you know, I can't yet close out any other claims or avenues unfortunately.

Q But other than what you described so far is there anything more that you would include in that etc. other than what you've already included?

A Well, no, just from my own as a non attorney I probably included quite a bit a RICO Act would potentially include things that would otherwise have nothing to do with this case just general, you know, predicate felonies, you know, so obviously anything, any other types of corruption that would tend to fit under, you know, said act would potentially fall there and, you know, would perhaps be included either as the etc. or as, you know, as under the RICO Act.

Q So the etc. is actually referring more to any other types of corruption that you already alluded to earlier today?

A Yes, as well as I mentioned the

- Burke -

specific amendment again, I don't want to misquote the constitution I was sworn to uphold and gladly do, but I believe, you know, if you do we have some law books here but I believe it is the Fifth Amendment, but I don't want to misconstrued that that refers to the federal, to government seizure of property.

Q That's okay, I just need to know what you perceive to be --

A That would be an etc., definitely, but other than that as far as, you know, I would say leaving it open to amendment by, you know, any counsel that I would choose to retain or, you know, would come into agreement with me then, no, I wouldn't add to anything at this time, no.

Q Referring further to your notice of claim you mention an unlawful seizure and conversion of 457 account?

A Yes.

Q Is it your, what exactly is your understanding is the unlawful seizure and conversion that occurred?

A It's my understanding it still is extant is the word, it still existed that I'm

- Burke -

totally locked out of this account that's why I had to borrow from my 401-K, that apparently this Mr. Acosta, I don't know, maybe I don't know how, maybe he didn't even know I had a 401-K, maybe he would have froze that one as well, obviously I'm purely speculating there I admit, but he apparently totally froze or has frozen and/or converted, I don't know, I have no access to it at all as far as I don't know it exists, where it's claimed to exist, in fact I would really like to know if Fascorp for instance is acting as a bank where in fact my money is, if it isn't what bank, how it's being held and some of the details involved with that where it's allegedly being held or actually being held where these moneys and for my 401-K as well, but it's my understanding that this account is still frozen illegally I believe, criminally, that this Mr. Acosta, whoever is working with him, I did mention some people that they are acting criminally and against my fiduciary interests, and I believe against the interests, at least in a technical sense to the Authority as well, obviously creating these torts and criminal acts is something that doesn't, you know, bring good repute. I happen to be an MTA employee myself, it certainly

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- Burke -

does me no favor to, you know, to make these accusations and so on and certainly it's something I would like to see resolved ASAP.

Q Now, when was the last, have you been able to get onto the web access to look at your accounts?

A I can look, yes, I can look at the accounts, I can't, but basically I have problems with logging onto the 457 account as far as doing any changes to the account at all including obviously a loan. I did attempt to even, you know, get a general disbursement loan from, I wasn't allowed to make any type of loan and I was told by Fascorp that as well that Mr. Acosta has frozen this account.

Q Who did you speak to at Fascorp that said that?

A It was several different people, you know, these are people, you know, they input you through different levels, different people answer the phone --

Q You don't remember --

A Give you the first name, I don't know if it's really their real name, it's supposed to be



- Burke -

recorded, you know, as I said mention I made approximately a hundred calls I must have talked to, obviously some of those were the same person but, you know, more than a score of people and management, basically anybody who would get on the line with me which became less and less over time for whatever reason.

Q So when is the last time you actually looked at your account on the web, the 457 account let's start with that?

A Well, fairly recently, you know, certainly in the beginning of the month I do it I look at it monthly.

Q And you saw the 401-K account as well during the beginning of the month?

A Yes, and of course it shows my, you know, the outstanding loan, etc.

Q Do you disagree with the numbers itself that exist on it?

A The one thing I disagree with and I would also I guess use the term, I guess a legal term demanding that the loan I did obtain from the 401-K be correctly seen as, which it is, as it in fact what it was used for immediately was to pay for

- Burke -

my primary residence and that it be considered as a 20-year loan not a five-year loan and that the correct amount be deducted from my paycheck, this is causing more stress, financial and mental anguish, financial stress and mental anguish by limiting my income.

Q And so the limitations on your web access is that you would no longer be able to effect any changes at all on the account?

A On the 457 account, apparently I have access to the 401-K of course since I have an outstanding loan which is apparently equal to the amount I would be able to obtain from the 401 alone, okay, certainly I can't obtain anymore loans from that and there's no way for me to change it on line absolutely after the fact from my knowledge to a what they call, I don't know what you call it, a primary residence loan or housing loan whatever they call it, real estate loan I don't know.

Q But the 457 account you have the numbers you see on the 457 account are accurate as far as I know?

A As far as I know, yes, it's all in MTA stable value, what is that bonds or whatever a

- Burke -

hundred percent in that account it's not in any stocks or anything, both accounts.

Q But you cannot change any, what were you trying to change on the account?

A The first couple of times I tried to get another loan because I was always intending to get a loan both from a 401-K and 457 both as primary loans which I was legally entitled, am legally entitled to do up to the maximum amount which would have been 50,000, it would have been 25,000 in the 401-K, 25,000 for the 457, both, as a matter of fact I may have obtained a little bit more, like 27 up to half, so maybe by now it would be like 30,000 from, you know, either one but say I was planning to take out 25,000 from each one and as my primary residence loan in which 20 years there's a very significant difference in the amount that is deducted on the order of, you know, many hundreds of dollars every paycheck which my paycheck is being I believe illegally diminished by these acts.

Q So when you're referring to it not being changed you're referring specifically to not being specifically to order to enact a loan?

A Yes.

- Burke -

Q Anything else?

A I wouldn't try to change anything else actually, but it does say that it's locked out or I forget what it says, calls it a pending loan or something ridiculous, like I can't obtain a loan, it basically tells me to call Fascorp if I need something about that and, you know, I'm not allowed to, with their cease and desist letter I'm not allowed to call them, so it's kind of a bit of a catch 22 with that I guess I just lost the money so it's too bad.

Q The loan that you are trying to access is for a primary residence loan?

A Yes, for my condominium.

Q For your condominium, this is for both the 457 that you're referring to that you cannot get into?

A Yes, and the 401-K as part of this I would be asking, you know, when I go to court injunctive relief that the 401-K loan be correctly reflected as a primary residence loan as it is and that the correct amount ongoing be deducted from my check as well, I don't know about any past debits but, you know, obviously I would ask that, request

- Burke -

that the court ask that the Authority deduct the correct amount and that the loan would be seen as what it is.

Q On your request for the loans when you state the residence that you're getting the loan for are you placing the, which address are you placing down on the request?

A Well, it's for the purchase and I'm only purchasing one home so it's obviously for the condominium at Trump Las Vegas, you know, I don't own the apartment I live in and frankly my landlord would rather see me leave, so.

Q Is it your understanding that, well, let me retract that, did you place in your request for the loans that your primary residence is your Las Vegas residence?

A I'm trying to remember if they even ask you that, I don't know if they do on the web, because I did, you know what, I did, it worked, you know, one time in August it worked, you know, when I put it in as a primary loan I did it through the web and I don't know if they asked for the address, they asked for, you know, they, you know, mention there's a primary residence, I forget what their rules were

- Burke -

that for, you know, the 20-year loan and obviously, you know, that it be for a residence, a real estate investment or home purchase however you want to refer to it.

Q So somewhere during the process of applying you put down the Las Vegas address?

A I don't know if you do that on the web to be honest with you, I'm trying to remember the exact procedure it was awhile ago, but I don't recall them requesting, asking what the address was, I mean maybe they intended, obviously I did in fact disclose to them, you know, by mailing them a copy of the contract which obviously had a great deal more than just the address, but everything possibly that could be covered about this residence to Margarita Hahn and apparently who works for Fascorp for some reason within MTA property, I don't know how that works.

Q So the contract that you sent would have indicated that the property that you wished to get the loan for is located in Las Vegas?

A Yes, or had the address and purchase price, you know, as I said approximately 50 pages obviously there was a plethora of data.

- Burke -

Q Now, are you planning to retire soon?

A Unless I win the Lotto, I don't know, I'm 45, it's yearlier than most people retire, I'm certainly not a man of means.

Q You have years, more productive years ahead of you?

A I hope so, knock and wood.

Q Did you get an appraisal of the condominium property in Las Vegas?

A I did not, no, you know, I discussed it with my brother who is a real estate agent and, you know, also he mentioned and I was told that in fact they sent me some more literature they are sending me Trump they are building in other places Chicago and Hawaii as well they are building an identical building apparently next to the one they are building that I own this property in that they are selling for the same property for instance that I bought for 710,000, well, it was either 30 or 33 percent more so it would have been appraised, I don't know, obviously I guess it's a legal term it wasn't appraised, but it's my understanding the property is worth approximately a million dollars because they've been selling identical property,

- Burke -

absolutely identical properties in an identical building next to this building for a million plus.

Q What do you expect your apartment if and when you eventually get it would be worth?

A As I said this is a very approximate number, you know, because real estate goes up and down somewhat, it seems to be leveled off in Las Vegas for instance, I did use the figure a million dollars it might be a little more, you know, you know, whatever it's worth is what it's worth, you know, or it might be a little less if it starts going down I don't know, but I did use the term a million.

Q But the number you achieved you reached a million dollars with is from --

A From them selling identical, the Trump itself is selling identical properties identical to this studio, obviously it's more on higher floors for instance, all of them, the whole building is pretty much identical and every property he was selling 30 to 33 percent more than for instance the purchase price, so he was selling this identical, what would be this identical studio for something approximately a million dollars or just over a



- Burke -

million but let's, you know, round it to a million.

Q You're getting that from literature that Trump has been sending out to you?

A Right, and information from my brother etc., and, yes, he sends out E-mails he's trying to get, you know, obviously people to buy, you know, and bragging about how quickly he sold it and they are sending me regular E-mails about how far up the construction is, and the amenities blah blah blah.

Q How long has your brother been in the real estate business?

A I don't know --

Q Roughly?

A Three or four years.

Q What exactly does he do?

A Well, yes, he's a real estate broker and I believe he also teaches jazz at the New School, he's I guess not a professor I guess a lecturer or something.

Q How much actually have you deposited, when you say including deposit what is the deposit you're referring to?

A I deposited 20 percent of the purchase price so, okay, that would have been 140, so that

- Burke -

would have been 142,000.

Q You have given over to Trump with a deposit of \$142,000?

A Yes, in total.

Q When was your first payment that you gave them?

A Well, the first payment it was a \$10,000 deposit that was before any contracts, that was just, I don't know what you, what the term is, like mostly like a holding deposit fee which you could withdraw, it wasn't any legal in a sense deposit that you couldn't get back, that was in either around December 2005 around that time I think and then I made, no, no, it couldn't, it would have been December 2004 and then so, yes, the first 10 percent would have been September 2005 and then the second was obviously September 2006.

Q When is your next payment due?

A Well, I owe the mortgage, I get a mortgage, you know, obviously any moneys, cash moneys I could put in to lower the amount of the mortgage will be when the building is completed that's from my understanding, they said the beginning of 2008, I guess, I don't know if you have

- Burke -

to wait for the certificate of occupancy or what, those are, those are obviously important details I would like to know myself what the exact date is.

Q So is it a \$10,000 deposit each time?

A No, I made a \$10,000 deposit and then when I agreed to purchase the property the agreement was done in, you know, the summer of 2005, you know, I did the original contract, the contract I sent to Margarita Hahn, and then in September of 2005 I made, well, I already had the 10,000 deposit so I made a \$61,000 deposit to complete the first 10 percent and then in this year I had, 2006, I believe it was September 7, 2006 I was required by the terms of the contract to make a second 10 percent deposit of 71,000.

Q And that's been paid?

A Yes.

Q And your next, the next --

A No, there is going to be no next, the next is the rest of it which I'm going to have to obtain a mortgage for, and obviously any amount would be, you know, if I could put in some more, you know, capital then it would obviously lower the amount of the mortgage, obviously I have to come up

- Burke -

with over, I guess it would be 568,000 something like that, no, 558,000 I believe something like that.

Q When do you have to have the mortgage in place?

A I guess at the time of the completion or, you know, sometime after that I haven't, I have to either look, I guess, you know, the exact completion date was obviously, you know, it was somewhat of a moving target, so I believe it's sometime after that I would imagine I would be noticed hopefully I would have enough time to be able to put that together but obviously I'm somewhat looking into mortgages and, you know, this again goes back, you know, to this deduction, for instance in this five-year loan obviously lowering my income it creates potential problems as far as being able to obtain a mortgage and, you know, can potentially perhaps intended to interfere as I mentioned tortuously as well and fraudulently with the purchase of my property to complete the purchase in order to create a default for whatever reasons.

Q What is your base salary right now, roughly?

- Burke -

A My base salary is, well, I don't know, 50 some thousand a year I guess, it just went up a little bit.

Q And how much are you actually, how much are you actually taking home, roughly?

A Well, it depends take home, I don't know, it gets deposited, you know, I have to look on my check, you know, the gross is about, you know, 2200 every two weeks something around there.

Q So you actually only have to worry about getting the next payment for this Las Vegas property in 2008 sometime?

A I believe that's correct.

Q You are not presently in default of anything --

A No.

Q In the Las Vegas property. Have you ever defaulted on any other loans --

A No.

Q In the past?

A No.

Q I'm sorry, have you ever defaulted on any contract I should say if you're aware of any?

A No.

- Burke -

Q And you haven't defaulted on any loans?

A No.

Q I'm nearly done at this point, Mr.

Burke, could you just tell me what would satisfy you in terms of your claim right now in terms of this matter how would you like it to be resolved?

A That's a good question, well,

obviously I would demand that, you know, the parties cease and desist from interfering with the purchase of my property in getting, you know, a lawful loan of my own money just as you know a bank who can, you know, reject I suppose someone's loan for certainly at least any non discriminatory reason, but, you know, the MTA desist and desist that they, in fact I really don't think Solomon Acosta can be doing this job, he should either be doing some other job, I think he really needs to be terminated or moved, you know, certainly to some area where he has no direct control over peoples' moneys and, well, I don't know, as far as, you know, making me whole I don't know, obviously there was as I did allege some mental stress, you know, I had figures with the notice of claim obviously, you know, I'm assuming in

- Burke -

this that this is going to be, that this is ongoing that your position is that you have the right to do this and, you know, including seizing my moneys and, you know, attempt to your interfere with my contract and the purchase of my property. And I also did want to bring up again, you know, this gets to motive with Mr. Acosta, again there isn't a great deal of proof involved as of yet, but I did file a discrimination claim against an employee who may or may not be a friend of Mr. Acosta's, and this all may be resulting in retaliatory acts involved with the discrimination claim obviously because people were asking me all during this time what is the motive for this individual, obviously one is, you know, to create a default on the property, and I lose the property and maybe, you know, if they get some consideration in return from the developer, the other is simply, you know, acts of retaliation for my discrimination complaint against a supervisor.

Q Who is this individual?

A The supervisor's name is Mr. Martinez.

Q Full name, if you know?

A I don't have his first name, he's a

dispatcher, he's at the 207th Street station and I

- Burke -

made a discrimination complaint against him regarding, you know, obviously contract violations and illegal acts resulting in shortage of my pay.

Q What is the claim of discrimination again, what are you claiming that, how, in what aspect did he discriminate against you?

A Well, you know, he made comments, he apparently doesn't like people of Irish background, maybe the reasons are good or not good I don't know, I don't want to go into that too much, but, you know, that's pretty much what it was involving and, you know, as far as, you know, Mr. Acosta obviously I don't know the gentleman but, you know, there is some possibility that he knows Mr. Martinez, I certainly haven't been able to eliminate that, and that is a possible motivation if you're interested, I don't know if I necessarily have to prove motivation, but it was mentioned in notice the people involved with the discrimination complaint about that this might be considered as an aspect of retaliation for discrimination, the discrimination complaint excuse me.

Q Other than these grievances that you've already mentioned are you involved in any



- Burke -

other lawsuits at this time?

A Yes.

Q What type of lawsuits are you involved in?

A Well, against the Department of Commerce and against my landlord.

Q What lawsuit do you have against the Department of Commerce?

A That is also a discrimination lawsuit involving the Bureau of Census.

Q Where was this lawsuit filed?

A In federal court, right now in front of the Second Circuit.

Q It was filed in Manhattan?

A Yes, the Southern District.

Q Was any particular individual that you named as defendant in that case?

A Yes, a David Brown.

Q Were you represented by an attorney in this case?

A No.

Q What is the pending status of the Department of Commerce case?

A It's in front of the Second Circuit,

- Burke -

briefs were filed and I got to do a reply brief and then I guess you get the oral arguments in front of the Second Circuit.

Q So did the lower court had made a decision at one point?

A Yes, they ruled against me in summary judgment.

Q And the other case you mentioned was against your landlord?

A Yes.

Q What is that case over, concerning?

A It was a number of complaints but obviously warranty of habitability, etc.

Q Is that still pending?

A Yes, it is, it's a new case, I had a previous case which I lost and then this case it's before a judge, it's been there for awhile.

Q Is that housing court?

A Yes.

Q Also in Manhattan?

A Yes.

Q What is the landlord's name?

A Kenmore Associates.

Q Same landlord for the previous case

- Burke -

you had with the landlord?

A Yes.

Q Other than these three cases, these three lawsuits any other lawsuits you've been involved with in the past?

A No.

Q You mentioned warranty of habitability, is anything --

A Yes, there's a number of problems mostly with the plumbing, etc., with the apartment.

Q Does anybody live with you?

A No.

Q Do you yourself have any family other than --

A You mean am I married, no, I'm not married, no.

Q Any children?

A No.

Q Before the 23rd Street address you gave where did you live before then?

A Actually I lived with my brother on Thompson Street, I lived it was 175 Thompson Street.

Q Does he still live there?

A No, he has a brownstone on West 129th

- Burke -

Street.

Q How long were you at 175 Thompson or with your brother?

A Two years.

Q Did you pay any rent at that location?

A Yes.

Q Were you on the lease?

A No, it was his lease.

Q And before that where did you live?

A Well, I was, I guess that's when I was in Europe, I was in Europe for a year and then before that I was in Los Angeles.

Q How long were you in Europe, a year?

A One year.

Q This wasn't when you were, were you at school in Europe at that time?

A Yes.

Q This is in London then?

A Yes, for the most part I was in London.

Q Are you claiming any physical injuries, physical now as a result of this matter?

A No, no physical injuries.

Q Do you have anything more that you

- Burke -

would like to put on the record at this point?

A No, I would just, you know, I don't know how much you did, you know, on this case yet but I would ask that if you could get any of the tapes from Fascorp obviously, and, you know, I believe, you know, inspector general they might have some, you know, information if you care to get it from them, I don't know if they'll give it to me they might give it to you. They did give me a plan document, that was it, and, you know, obviously they contended that this Mr. Acosta pointed to something and the plan document said it had to be a building, it had to be, you know, done in a reasonable time, I believe in the IRS code Mr. Acosta quoted IRS codes in no detail in a letter to me that I understand a reasonable time, the IRS code is two years, the two years that if you purchase, for instance if you purchase a bearer piece of property you have two years to build a home, I believe in the interim it can be considered, you know, for obviously tax purposes as your primary residence even though you're not living in that place, this is from my understanding settled law, you know, obviously Mr. Acosta is simply incompetent in his job, obviously

- Burke -

you get in a gray area between incompetency and criminality in doing these sort of things, I mean, again obviously it gets to motivation and, you know, what he's intending to do, sometimes it doesn't matter, you know, if I'm operating my train and I tend to run someone over or I accidentally do it the person is still dead and in this situation I would still be, you know, due to his actions and default of the property, you know, certainly he did nothing that would help me not be in default of this property, you know, to prevent me to make a lawful loan of my own money. I can't fail to add that how many times, again I would like to add this is my own money that we're talking about that I'm not allowed to borrow this is terms of my own money is just something that's obviously, you know, I did contend that this is a conversion, you know, or theft, or whatever have you that this individual seemed to be acting with power of attorney over my money which I never granted to him and obviously exercises degrees of control which, you know, obviously would perhaps be more for, you know, triers of fact and law to decide but, you know, I certainly would be willing to discuss, you know, any types of settlement or,

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- Burke -

you know, types of any agreement where this can be resolved amicably without having to, you know, use up the court's time and those types of resources.

Q Did you ever apply for a general purpose loan from the 457 account?

A I believe I tried to get a general disbursement, yes, and it's just totally blocked from any type of loan, when I just click on just trying to obtain a loan, and of course and then I try to do it by phone they said that the 457 was still blocked and again --

Q For all loans?

A Yes, for all loans, and, you know, obviously this is totally illegal and criminal in violation of any plan or any alleged or actual regulations involving this, you know, obviously it's alleged but a tortuous act and a criminal act it's ongoing up to this very minute from my understanding and again, you know, one of the things you did, you know, as a discussion, you know, what would be due to resolve this obviously I think, you know, removing this individual from any, absolutely any authority over my money at all ever would certainly be a start, it would certainly be something that I

- Burke -

would consider to be, you know, moving in a direction of, you know, of resolution, you know, obviously I don't think every single person in the MTA was involved in this situation and certainly to isolate or eliminate or remove, removing obviously someone who had nothing to do with this I don't know what this individual's training or experience or agenda involved with moneys but obviously moneys is not safe around him, so.

Q Now, you mentioned the two-year, you described some type of two-year --

A From my reading of IRS regulations this individual, I was quoted second and third-hand IRS regulations like it was some kind of mantra open sesame or something you could just said well you said IRS regulations you get to seize my money oh, that's, you know, the quietus est domino of that that, you know, I can't answer that now, you know, because there's a million different regulations, you know, I guess you beat me but just for whatever reason I happened to look at IRS regulations up including, you know, the regulation 457 and 401-K but also other regulations and it's my understanding that you could have a two-year period, I was



- Burke -

interested in, also, you know, living in this place I believe is two years out of five when it's completed it's for IRS purposes it can be considered a permanent residence and sold and obviously the capital gains are not taxed up to 250,000 or if you're married up to 500,000, this is the IRS regulations and I did ask, I asked the inspector general's office and others that I get a specific detail what IRS regulations are involved with this, you know, power of attorney, conversion or, you know, freezing etc., etc., of my account and, you know, obviously it's tortuous interference, etc.

Q Do you have a specific section you're referring to when you're talking about a two-year period?

A I'm trying to remember, I don't know if it has to do with primary residence as far as, as far as the well known now feature of basically not having, basically not having to pay a capital gains tax on gains for property that the two-year, you know, this is what people do they buy a blank piece of property, they build on it, this is being built I'm not the contractor I didn't buy, the contractor he's building it, someone else is building the

- Burke -

property, it will be, it's being built, at least my unit is being built in my name and it would be, you know, I guess, I don't know as you define I believe under the two-year period and it would certainly qualify as a primary residence by every piece of the IRS code, and again these individuals, and the attorneys who consulted with them are just incompetent or indifferent or whatever, again it really has the same outcome, you know, of whether it was because of, you know, retaliation for the discrimination claim or maybe this individual is hoping to profit off of this default or they don't like me for some reason they just want to, you know, oppress the hourlies, they didn't like the strike because I'm a shop steward or any reason at all, to me I'm not really that interested in, you know, maybe as much as the why's as the what, and this what they are doing is, you know, I mentioned some of the people I did call I would be calling some more obviously, I did mention I have other cases so I haven't spent all my time on this case but obviously when I filed the case and so on I'll be notifying other, there's going to be a new attorney general, a new governor and so on and, you know, I

- Burke -

believe a new executive director and possibly even an independent I.G.'s office these people will all be noticed again.

Q Did somebody, this two-year period that you're referring you did it from your own research, correct?

A Right.

Q Did anyone from the MTA or Fascorp refer to this time period to you?

A No.

Q Has anybody else --

A No, the inspector general he showed me the plan documents that he believes he was told are allegedly, I don't know, again this would be pure hearsay, this is the area that they were operating under and the plan documents not that I, it wasn't any signed agreement as far as I saw between me and Fascorp or the MTA it's just their plan documents which I guess ex post facto they can write anything in there which I guess limits my rights to my own property but in that it says something about reasonable time for I guess either to move in or to purchase, to be complete whatever it is and I don't know if it was in quotes but obviously it doesn't

- Burke -

define reasonable time within this plan document and I'm certainly not agreeing that those plan documents are governing authority it was even or that it is or isn't a part of any agreement I made with Prudential which I never made with Fascorp I don't know that I made with the Transit Authority regarding my money.

Q Understanding that you're not claiming to be part of that contract how do you understand the term reasonable time to mean?

A It was, it was referred to, Mr. Acosta referred to it IRS codes, the IRS code is two years, he didn't use any term of time, I believe he thinks he has absolute authority over, working for the Authority he has absolute construction over what the amount of time is reasonable time which, you know, as my antifiduciary he could just construe it I don't like this guy so I'm construing reasonable time to mean one month or one year or six months, I'm not interested in what he thinks, it's not his money he has nothing to do with it, we can just decide it, you know, in front of a judge and jury, that's it.

Q I'm asking you your personal opinion at this time?

- Burke -

A My opinion it means two years.

Q It means two years?

A At least two years, but certainly two years that's what I got from the IRS code, you know, I don't expect anybody to memorize the IRS code including yourself.

Q I'm not a tax attorney I have no idea.

MR. CHIN: I'm done at this point, thank you for your time, Mr. Burke.

MR. BURKE: All right, thanks a lot. Anything else that you want, I would like to give you my E-mail at least.

MR. CHIN: That's fine, what would that be?

MR. BURKE: It's

BRIANTBURKE@GMAIL.COM.

MR. CHIN: The time presently is 1:05.

(Time Noted: 1:05 P.M.)

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Subscribed and sworn to  
before me this \_\_\_\_\_ day  
of \_\_\_\_\_ 2007

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Notary Public

C E R T I F I C A T E

STATE OF NEW YORK )

ss.

COUNTY OF NASSAU )

I, Bruce Rothman, a Notary Public in and for the County of Nassau, State of New York, hereby certify that the foregoing examination of

Brian T. Burke,

was taken on the 20th day of December 2006, Pursuant to Notice, and recorded stenographically by me; and that the foregoing examination is a correct and accurate transcript of my stenographic notes. I further certify that the witness was duly sworn by me, prior to testifying, to tell the truth, the whole truth, and nothing but the truth:

I further certify that I am not an attorney or counsel for any of the parties, that I am not related to or employed by any of the parties or any of the attorneys in this action, and that I am not financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of December 2006.



Bruce Rothman

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